

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of the Office of Financial and Insurance Regulation

In the Matter of:

Neil Lund,

Enforcement Case No. 07-5444

Respondent.

Issued and Entered,
This 15th day of October, 2008,
By Stephen R. Hilker,
Chief Deputy Commissioner

FINAL ORDER TO CEASE AND DESIST

I.

Findings of Fact

1. On January 22, 2008, pursuant to Section 16 of the Mortgage Brokers, Lenders, and Servicers Licensing Act, MCL 445.1666, the Chief Deputy Commissioner issued to Respondent an ORDER TO CEASE AND DESIST AND NOTICE OF OPPORTUNITY FOR HEARING ("Order").
2. The Order, served on Respondent via certified mail, advised Respondent that failure to request a hearing within 30 days would result in the issuance and entry of a final order to cease and desist against Respondent.
3. The Order was received by Respondent on May 5, 2008, as evidenced by the signed certified mail domestic return receipt.
4. Respondent failed to request a hearing within 30 days as required by statute.


II.

Final Order to Cease and Desist

NOW THEREFORE, based upon the factual findings set forth above and the files and records of OFIS, IT IS HEREBY ORDERED THAT:

1. A Final Order to CEASE AND DESIST, pursuant to MCL 445.1666, shall be and hereby is issued and entered against Respondent.

IT IS SO ORDERED.



Stephen R. Hilker
Chief Deputy Commissioner

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of the Office of Financial and Insurance Services

In the Matter of:

Neil Lund

Enforcement Case No. 07-5444

Respondent.

_____ /

This 22^d Issued and Entered,
day of January, 2008,
By Peggy L. Bryson,
Acting Chief Deputy Commissioner

ORDER TO CEASE AND DESIST

and

NOTICE OF OPPORTUNITY FOR HEARING

The Commissioner of the Office of Financial and Insurance Services ("OFIS"), pursuant to his statutory authority and responsibility to administer and enforce the Mortgage Brokers, Lenders, and Servicers Licensing Act ("MBLSLA"), MCL 445.1651 *et seq.*, hereby ORDERS NEIL LUND ("Respondent") to immediately CEASE AND DESIST from conducting business as a mortgage broker, mortgage lender, or mortgage servicer without first obtaining a license or registering under the MBLSLA. Respondent is also notified of an opportunity to request a hearing on this matter.

I.

ORDER TO CEASE AND DESIST

1. The authority to issue the Cease and Desist Order is found in Section 16(1) of the MBLSLA, which states:

After an investigation has been conducted pursuant to section 13, and prior to holding the hearing under section 18, the commissioner may order a person to cease and desist from a violation of this act or a rule promulgated or an order issued under this act. MCL 445.1666(1).

2. A review of OFIS records reveals that Respondent is neither licensed nor registered under the MBLSLA.

3. Section 2 of the MBLSLA prohibits a person from acting as a mortgage broker, mortgage lender, or mortgage servicer without first obtaining a license or registering under the Act unless that person is otherwise exempt from the Act. MCL 445.1652.

4. A "mortgage broker" is defined by Section 1a(1) of the MBLSLA, as follows:

"Mortgage broker" means a person who, directly or indirectly, does 1 or both of the following:

(i) Serves or offers to serve as an agent for a person in an attempt to obtain a mortgage loan.

(ii) Serves or offers to serve as an agent for a person who makes or offers to make mortgage loans. MCL 445.1651a(1).

5. From April 2, 2007 through August 7, 2007, pursuant to Section 11(2)(c) of the MBLSLA, OFIS conducted an examination of Licensee Mark D. James d/b/a The Captiva Group. During the course of the examination, OFIS staff learned that Respondent was engaged in activity regulated by the MBLSLA and requiring Respondent to be licensed or registered

thereunder. OFIS staff investigated the matter pursuant to Section 13(1) of the MBLSLA, which provides:

The attorney general, the commissioner, or any other person may file a complaint with the commissioner alleging that a person has violated this act or a rule promulgated or an order issued under this act. If the complaint is made by the commissioner, he or she shall designate 1 or more employees of the financial institutions bureau to act as the person making the complaint. Upon receipt of a complaint, the commissioner may begin an investigation pursuant to the provisions of this act. MCL 445.1663.

6. The investigation revealed that Respondent has engaged in residential mortgage related activity regulated by the MBLSLA without the requisite license or registration. Specifically, OFIS staff found that, by way of an independent contractor or “net-branch” business relationship with Licensee Mark D. James d/b/a The Captiva Group., Respondent engaged in mortgage brokering activity requiring licensure or registration under the MBLSLA. Respondent was engaged as an independent contractor whose income was reported on an IRS FORM 1099-MISC. Respondent was not exempt from licensure under Section 25 of the MBLSLA, MCL 445.1675, or acting as an employee of a mortgage broker or mortgage lender licensed or registered under the MBLSLA. Accordingly, Respondent engaged in unlicensed mortgage activity and is subject to regulatory enforcement actions authorized under the MBLSLA.

7. Based upon the violation of the MBLSLA, Respondents may be subject to all penalties and fines that may be imposed against a licensee or registrant. Section 1a(k) of the MBLSLA provides:

“Licensee” means a person licensed or required to be licensed under this act. MCL 445.1651a(k).

Section 29 of the MBLSLA provides, in pertinent part:

(1) A person or any owner, partner, member, officer, director, trustee, employee, agent, broker, or their representative acting on the authority of such person who willfully or intentionally does any of the following is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00, or imprisonment for not more than 3 years, or both:

(a) Engages in this state in the business of a mortgage broker, mortgage lender, or mortgage servicer without a license or registration required under this act.

(2) If the commissioner finds that a licensee or registrant has violated this act or the rules promulgated under this act, the commissioner may do 1 or more of the following:

(a) Assess a civil fine against the licensee, registrant, or a person who controls the licensee or registrant of not more than \$1,000.00 for each violation, except that the licensee, registrant, or a person shall not be fined more than \$10,000.00 for a transaction resulting in more than 1 violation, plus the costs of investigation.

(b) Suspend or revoke a license or registration or refuse to issue a license or renew a license or registration.

(c) Require the licensee or registrant or a person who controls the licensee or registrant to make restitution to each injured individual, if the commissioner finds that the violation of this act or a rule promulgated under this act resulted in an injury to 1 or more individuals.

(3) A civil fine assessed under subsection (2) may be sued for and recovered by and in the name of the commissioner and may be collected and enforced by summary proceedings by the attorney general. Each individual injured by a violation of this act or a rule shall constitute a separate violation. In determining under subsection (2) the amount of a fine, whether to suspend or revoke a license or registration, whether to refuse to issue or renew a license, or the amount of restitution, the commissioner shall consider the extent to which the violation was a knowing and willful violation, the extent of the injury suffered because of the violation, the corrective action taken by the licensee or registrant to

ensure that the violation will not be repeated, and the record of the licensee or registrant in complying with this act. Any proceedings under this subsection shall be subject to the procedures of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. MCL 445.1679.

8. Section 16 of the MBLSLA provides, in part:

A violation of a cease and desist order issued under this act is a violation of this act and the commissioner or the attorney general may take any action permitted under this act, including making application to the Ingham county circuit court to restrain and enjoin, temporarily or permanently, or both, a person from further violating the cease and desist order. 445.1666(3).

It is therefore ORDERED that Respondent immediately CEASE AND DESIST from conducting any business regulated by the MBLSLA without first obtaining the requisite license or registration under the Mortgage Brokers, Lenders, and Servicers Licensing Act.

The Commissioner of OFIS specifically retains jurisdiction of the matter contained herein to issue such further order or orders as he may deem just, necessary, or appropriate so as to assure compliance with the law and protect the interest of the public.

II.

NOTICE OF OPPORTUNITY FOR HEARING

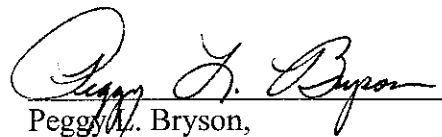
Section 16(2) of the MBLSLA provides:

A person ordered to cease and desist shall be entitled to a hearing before the commissioner if a written request for a hearing is filed with the commissioner not more than 30 days after the effective date of the order. A hearing shall be conducted in accordance with the provisions of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. MCL 445.1666(2).

Should Respondent wish to request a hearing relating to the Commissioner's Order to Cease and Desist, a hearing must be requested in writing within 30 days of the issuance of this Order. The request for a hearing must be addressed to:

Dawn Kobus, Hearings Coordinator
Office of Financial and Insurance Services
Ottawa State Office Building, Third Floor
611 West Ottawa Street
Lansing, Michigan 48933

Please be advised that any statements made are voluntary and may be used in any proceeding that may be held. If a hearing is requested, Respondent has the right, at Respondent's expense, to legal representation at the hearing. Respondents that are corporations must be represented by a Michigan licensed attorney. Any contact with OFIS shall be directed to James Westrin at (517) 335-3369.


Peggy L. Bryson,
Acting Chief Deputy Commissioner